

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 210X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN MARICOPA COUNTY, AZ

Decided: October 28, 2003

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 2.1-mile line of railroad, known as the Creamery Spur, extending from milepost 914.3 to milepost 916.4 near University Drive between Priest Drive and Hayden Road in Tempe, Maricopa County, AZ. Notice of the exemption was served and published in the Federal Register on September 26, 2003 (68 FR 55740). The exemption is scheduled to become effective on October 28, 2003.¹

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in the proceeding that was served on October 3, 2003. In the EA, SEA indicated that, in response to UP's Historic Report, the Arizona State Parks (the State Historic Preservation Office or SHPO) noted that the proposed abandonment occurs in an area that contains a previously recorded archeological site known as La Plaza (AZ U:9:165 ASM). According to the SHPO, this site was determined to be eligible for inclusion in the National Register of Historic Places under Criterion D (Information Potential) as part of another agency's undertaking. The SHPO also noted that the subject line is part of a larger rail segment that was also previously determined to be eligible for inclusion in the National Register. In addition, the SHPO noted that the proposed abandonment occurs in a culturally sensitive area and recommended that consultations be conducted with Indian tribes pursuant to 36 CFR 800.4(a)(4).

According to SEA, the SHPO noted that these previous determinations were associated with the Central Phoenix/East Valley Light Rail Transit Project, and that the SHPO recommended that SEA coordinate section 106 efforts with the Federal Transit Administration (FTA), the lead Federal agency on the transit project. SEA stated that, as a result, it had initiated coordination efforts with FTA as well as the Phoenix Regional Public Transportation Authority (RPTA), the local transit project sponsor. SEA further stated that it had been informed by a

¹ The September 26 notice provided that trail use/rail banking requests were due by October 6, 2003. A notice of interim trail use (NITU) request was timely filed by the City of Tempe (the City) for the entire length of the line but for less than the entire width of the right-of-way. UP has requested clarification from the City on the width restriction. The Board will address the NITU request in a subsequent decision.

representative of RPTA that a Memorandum of Agreement (MOA) has been executed by the FTA, RPTA, and SHPO. SEA noted that among the issues addressed in the MOA are the identification and treatment activities associated with the historic and archeological properties identified by the SHPO as present on the rail line.

SEA stated that, pending completion of these coordination efforts, section 106 consultations, and any appropriate Indian tribal consultations, it recommends that the following two environmental conditions be placed on any decision granting abandonment authority: (1) UP shall take no steps to alter the historic integrity of the right-of-way (ROW) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA); and (2) UP shall take no steps to alter the ROW until SEA has conducted any appropriate consultations with Indian tribes pursuant to 36 CFR 800.4(a)(4).

Given the comments received on the EA, SEA continues to recommend the imposition of the two environmental conditions set forth in the EA. Accordingly, the conditions recommended in the EA will be imposed.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the conditions that: (1) UP shall take no steps to alter the historic integrity of the ROW until completion of the section 106 process of the NHPA; and (2) UP shall take no steps to alter the ROW until SEA has conducted any appropriate consultations with Indian tribes pursuant to 36 CFR 800.4(a)(4).
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary